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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/707,229

11/28/2003

Scott Sherman

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CANADA

EXAMINER

LEWIS, BEN

ART UNIT

PAPER NUMBER

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MAIL DATE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT SHERMAN, GLENN PRICE,
MEHRZAD TABATABAIAN, BRETT WIGHTMAN,
ATHAL CHRISTIE, and MARTIN PERRY

Application 10/707,229
Technology Center 1700

Mailed: May 19, 2009

Before VASCO S. HARPER, *Paralegal Specialist*.
HARPER, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received by the Board of Patent Appeals and Interferences on June 2, 2008. A review of the application has revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

Appellants filed an Appeal Brief on October 15, 2007 (Br). The Brief is not in compliance with 37 CFR § 41.37 which states in part:

(c)(1) The brief will contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section . . .

(vi) *Grounds of rejection to be reviewed on appeal.* A concise statement of each ground of rejection presented for review.

The “Grounds of Rejection to be Reviewed on Appeal” on pgs. 4 and 5 are not consistent with the Examiner’s rejections as stated in the Final Rejection mailed May 17, 2007 (FR). The only rejections stated in Appellants’ Brief that corresponds to the FR are nos. 1. & 3. To briefly summarize the discrepancy, the rejection stated in no. 2 of the Br., “35 U.S.C. 102(b)” according to the FR should be - “35 U.S.C. 102(e) – (see pg. 4 of Br. and pg. 5 of FR). All of the remaining stated rejections (except for no. 3) stated as 35 U.S.C. 102(b) in the Br. are rejected under 35 U.S.C. 103(a) in the FR. Likewise, the “Argument” section of the Br. maintains the incorrect statement of the rejections. Appellants should review the entire Br. and correct any stated inconsistencies between the rejections in the Br. and the FR in both the Grounds of Rejections and the Arguments sections of the Brief. Correction is required.

Additionally we note that the Final Rejection filed May 17, 2007 incorrectly states that the pending and rejected claims are 1-13. We assume this is a typographical error.

Accordingly, it is

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ORDERED that the application is returned to the Examiner:

- a.) to hold the Appeal Brief filed October 15, 2007, defective and notification to appellants to file a substitute Appeal Brief correcting the discrepancies noted above;
- b.) to carefully examine the substitute Appeal Brief for accuracy; and
- c.) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797

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